IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1379 OF 2004
IN
SECOND APPEAL (ST.) NO.43254 OF 2001

Shri.Ashok Vasumal Hasija & Anr. ...Appellants
V/s.
Shri.Babulal Ganesh Gujarathi & Ors. ...Respondents

Mr.R.N. Sanghavi, Advocate, for the Appellants. .
Mr.P.B. Shah, Advocate, for Respondent No.1. .
Mr.Hussain Javed, Advocate, for Respondent Nos.3, 4 & 5.

CORAM: B.H. MARLAPALLE, J.
Date : March 28, 2007.

P.C.:

. S.A. under Stamp No.43254 of 2001 was filed by the applicants and its registration was cancelled as per the order passed by the Registrar of this Court on 24.07.2002 and therefore this application came to be filed for restoration of the said Second Appeal.

2. As per the office notes, the application is beyond time by one year and 167 days. However the applicants have not filed separate application for condonation of delay and by an amendment an additional prayer to that effect has been incorporated in this application. The Appeal was dismissed for non removal of office objections within the stipulated period of

four weeks. It is contended that the learned counsel for the appellant had communicated to the appellant steps to be taken for removing the office objections and there was no response. This however cannot be a reason to condone the delay by itself. The Second Appeal is a statutory remedy and it should not be allowed to be defeated by technical defaults and therefore I am inclined to condone the delay caused in filing the restoration application subject to imposition of costs.

3. Hence delay condoned subject to payment of costs quantified at Rs.1,000/- and to be remitted to the Maharashtra State Legal Services Authority within two weeks from today. The office objections, if any, in the Second Appeal shall be removed within one week from today. The Civil Application is allowed in terms of prayer clause (a) and the Second Appeal is restored.

(B.H. Marlapalle,J.)